

JUL 31 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE HERNANDEZ-SILVA,

Defendant - Appellant.

No. 07-10194

D.C. No. CR-06-00175-FJM

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Arizona
Frederick J. Martone, District Judge, Presiding

Submitted July 22, 2008^{**}

Before: B. FLETCHER, THOMAS, and WARDLAW, Circuit Judges.

Jose Hernandez-Silva appeals from the 63-month sentence imposed
following his guilty-plea conviction for illegal re-entry after deportation, in

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

violation of 8 U.S.C. § 1326(a). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Hernandez-Silva contends that the district court clearly erred by failing to grant an additional one-level reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(b), despite the government's motion recommending the adjustment. The district court did not err as its decision was based on Hernandez-Silva's failure to timely notify authorities of his intention to enter a plea of guilty, thereby preventing the court from allocating its resources efficiently. *See* U.S.S.G. § 3E1.1(b) (2006); *see also United States v. Espinoza-Cano*, 456 F.3d 1126, 1135 (9th Cir. 2006).

Hernandez-Silva also contends that the overall sentence imposed was unreasonable due to the district court's refusal to grant a downward departure for cultural assimilation, its failure to consider mitigating factors, and its improper consideration of his criminal history. The district court noted that the facts did not support a departure for cultural assimilation, nor did they support a mitigated sentence. Furthermore, there is no evidence to suggest that the court placed undue weight on Hernandez-Silva's criminal history to the exclusion of other § 3553(a) factors. The district court did not procedurally err, and the sentence imposed is not

substantively unreasonable. *See Gall v. United States*, 128 S. Ct. 586, 596-97 (2007); *see also United States v. Dallman*, 2008 WL 2736010 (9th Cir. 2008).

AFFIRMED.